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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,852	12/11/2003	Linda Kucharski	778-001	8877

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CLIFFORD G. FRAYNE  
Suite 7A  
136 Drum Point Road  
Brick, NJ 08723

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/732,852	<b>Applicant(s)</b> KUCHARSKI, LINDA	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because it should be labeled "ABSTRACT".

Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The fluid bladder is disclosed as resembling a kidney-shape bag at page 3 of the instant application. Claim 2 sets forth the bladder as assuming the kidney shape after filling with fluid. This is contradictory. Thus, it is unclear how the bag *assumes* a kidney shape when filled with fluid when it already has that configuration.

3. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 7, indicates two different states of the fluid bladder; pre-filled and for containment of a fluid. Correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,3,7 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldfine (US 2002/0112499).

Paragraph 0077 indicates the carry bag **110** should be in contact with the inserted resilient fluid bladder (i.e., bag, box, etc.) **112** of paragraph 0078. Although not explicitly stated, the fluid bladder is pre-filled and disposable as is known in the art. Figure 7 shows the closure means as a flap **124,126** and a means for securing to the opposing panel **116**.

7. Claims 1,2,4,6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated Loulias (US 5,188,266).

Loulias teaches a carry bag having closure means **32** and a disposable, pre-filled resilient fluid bladder having a closure, said fluid bladder assuming a kidney shape of the carry bag when filled with fluid

#### ***Claim Rejections - 35 USC § 103***

8. Claims 1,6, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hagert et al. (US 3,830,270).

Hagert teaches a carry bag **16** having a closure means **60** and a resilient bladder **10** having a screw-threaded closure means **14**. Regarding the resiliency of the fluid bladder, see column 2, lines 60-65 and column 3, lines 33-36 which discuss the fluid bladder can be deformed by manual pressure and returns to its normal configuration upon release of said pressure.

The phrase "pre-filled" does not impart additional structure to the fluid bladder and/or to the claimed final product of the flexible carry bag and fluid bladder. Wherein the carry bag is

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designed to be opened and closed for receiving a fluid bladder therein, the fluid bladder can be pre-filled. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pre-filled fluid bladder to the carry bag of Hagert.

Regarding claim 7, the bladder is disposable since it can be discarded, especially after multiple uses. See also page 4, paragraph 1 of the instant specification discussing the fluid bladder of the instant application while "designed to be disposable" can be rinsed and reused.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagert.

Hagert teaches the claimed bag with fluid bladder except is silent regarding the bladder being formed of polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bladder of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It is noted that this common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of Official notice or that the traverse was inadequate.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagert.

Hagert teaches the claimed carry bag with bladder except for a zipper closure on the bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a zipper closure means since the examiner takes Official Notice of the equivalence of tie strings (laces) and zippers for their use in the art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art.

It is noted that this common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of Official notice or that the traverse was inadequate.

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11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loulias.

Loulias teaches the claimed bag with fluid bladder except is silent regarding the bladder being formed of polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bladder of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It is noted that this common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of Official notice or that the traverse was inadequate.

### ***Response to Arguments***

12. Applicant's arguments filed September 2, 2005 have been fully considered but they are not persuasive. The following are in response the arguments as addressing the rejection in view of Hagert:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fluid bladder is discarded after a single use, the fluid bladder is enclosed with a safety tab, and the fluid bladder has no shape prior to filling with fluid and becomes shapeless after dispensing of the fluid therein) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

16. Any inquiry concerning this communication or earlier communications from the examiner

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should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
November 21, 2005



Robin A. Hylton  
Primary Examiner  
GAU 3727